

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALIRIO ZAVALA, JUAN CARLOS DIAZ, ALEXANDER GONZALEZ, JAUME VILLAGRASA, LUIS TORRES, JOSE BRICENO, LUCIANO EMIGDIO, NICOLAS VELASQUEZ, GUSTAVO RANGEL, ARODIS HERRERA, JORGE GUERRERO, SEGUNDO MORALES MARTINEZ, SAHAGUN MEREJILDO, JAIME GRANADA, JOHN JAMIE RIVERA ALAYON, ANDRES TORRES, ERNESTO ALEJANDRO SANCHEZ, and EDUARDO CRUZ GONZALEZ,

Plaintiffs,

-v-

PEI ELECTRICAL SERVICES GROUP INC., CPI ELECTRICAL SERVICES INC., TOP SHELF ELECTRIC CORP., and PABLO IBEPULINO,

Defendants.

20 Civ. 9437 (PAE) (GWG)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On October 11, 2020, plaintiffs Alirio Zavala, Juan Carlos Diaz, Alexander Gonzalez, Jaime Villagrasa, Luis Torres, Jose Briceno, Luciano Emigdio, Nicolas Velasquez, Gustavo Rangel, Arodis Herrera, Jorge Guerrero, Segundo Morales Martinez, Sahagun Merejildo, Jaime Granada, John Jamie Rivera Alayon, Andres Torres, Ernesto Alejandro Sanchez, and Eduardo Cruz Gonzalez brought this case, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), and the New York Labor Law “NYLL”), against defendants PEI Electrical Services Group Inc., CPI Electrical Services Inc., Top Shelf Electric Corp. (“Top Shelf”), and Pablo Ibepaulino. Dkt. 1. On November 13, 2020, this Court referred this case to the Hon. Kevin Nathaniel Fox, United States Magistrate Judge, for general pretrial supervision. Dkt. 14. On December 2, 2021, this case was reassigned to the Hon. Gabriel W. Gorenstein, United States Magistrate Judge, referred for a dispositive motion. Dkt. 72.

Currently pending is Top Shelf's motion for summary judgment, seeking to dismiss all claims against them. Dkts. 80 ("Mem."), 81–84. Before the Court now is the June 28, 2022 Report and Recommendation of Judge Gorenstein, recommending that the Court deny the motion for summary judgment, on the ground that a reasonable jury could find that Top Shelf was plaintiffs' joint employer. Dkt. 105 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts the Report's recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

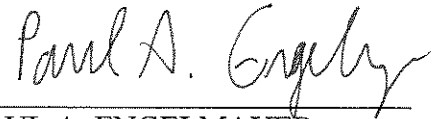
As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Gorenstein's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections" and that "[i]f a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal." Report at 26–27. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601,

604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court denies Top Shelf's motion for summary judgment. This terminates Judge Gorenstein's able pretrial supervision. The case will now proceed to trial. Should the parties wish to proceed before Judge Gorenstein, they are to jointly file, by July 27, 2022, a form consenting to Judge Gorenstein's jurisdiction, attached to this order. In the absence of receiving such a form, this Court will issue an order setting a date by which the parties are to file the required pretrial submissions as set forth under Rule 5 of this Court's Individual Rules and Practices in Civil Cases, and scheduling a final pretrial conference.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: July 13, 2022
New York, New York

AO 85 (Rev. 02/17) Notice, Consent, and Reference of a Civil Action to a Magistrate Judge

UNITED STATES DISTRICT COURT
for the
Southern District of New York

Alirio Zavala et al.

Plaintiff

v.

Top Shelf Electric Corp et al.

Defendant

Civil Action No. 20cv9437

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

*Printed names of parties and attorneys**Signatures of parties or attorneys**Dates***Reference Order**

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

*District Judge's signature*_____
Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.